

DUANE MORRIS LLP

James J. Holman, Esq. (NY 4423190)
Jarret P. Hitchings, Esq.
30 South 17th Street
Philadelphia, Pennsylvania 19103
jjholman@duanemorris.com
jphitchings@duanemorris.com

*Counsel for Aramark Corporation
and certain of its affiliates*

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re:

SEARS HOLDINGS CORPORATION, *et al.*,¹
Debtors.

Chapter 11
Case No. 18-23538
(Jointly Administered)

**LIMITED OBJECTION AND RESERVATION OF RIGHTS OF ARAMARK
CORPORATION AND CERTAIN OF ITS AFFILIATES TO DEBTORS'
NOTICE OF CURE COSTS AND POTENTIAL ASSUMPTION AND
ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES
IN CONNECTION WITH GLOBAL SALE TRANSACTION**

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); and Sears Brands Management Corporation (5365). The location of the Debtors' corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179. The Debtors also include SHC Licensed Business LLC (3718), filed as Case No. 18-23616 and SHC Promotions LLC (9626), filed as Case No. 18-23630 (the "Additional Debtors"). The Additional Debtors each filed a motion in their respective chapter 11 case requesting joint administration with the Debtors for procedural purposes only pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure.

Aramark Corporation, together with certain of its affiliates including, but not limited to, Aramark Management Services Limited Partnership, Aramark Services, Inc., Aramark Service Master Facility Services, and Aramark Uniform Corp. (collectively, “Aramark”), by and through its undersigned counsel, hereby files this limited objection and reservation of rights (the “Objection”) to the *Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transaction* [Docket No. 1731] (the “First Assumption Notice”) filed by the above-captioned debtors (collectively, the “Debtors”). In support thereof, Aramark respectfully states as follows:

STATEMENT OF OBJECTION

1. On November 19, 2018, the Court entered the *Order Approving Global Bidding Procedures and Granting Related Relief* [Docket No. 816], which contemplates a process for the assumption of executory contracts and unexpired leases.
2. On January 18, 2019, the Debtors filed a *Notice of Successful Bidder and Sale Hearing* [Docket No. 1730], stating that an affiliate of ESL Investments, LLC (the “Purchaser”) was the successful bidder for the Global Assets (as defined therein).
3. On January 18, 2019, the Debtors also filed the First Assumption Notice, which lists a number of purported executory contracts and leases that the Debtors claim are subject to possible assumption and assignment to the Purchaser in connection with the sale.
4. The First Assumption Notices identify several contracts related to Aramark.²
 - (a) Real Estate and Licensed Business – Aramark Master Services – MSA – 2013;
 - (b) RE – Aramark – Hoffman Estates Food Service - 2014;
 - (c) RM – Aramark Corporation – Master Services Agreement – 2008;

² See First Assumption Notice at pp. 33-34, lns. 791-796.

- (d) Sears Citi Bank Disney Incentive Trip 2019;
- (e) Untitled contract with Aramark Corp. dated as of October 6, 2018;
- (f) a second Untitled contract with Aramark Corp. dated as of October 6, 2018; and
- (g) RO – Aramark Uniform Services – Master Services Agreement - 2012.

5. As this Court is well aware, the Debtors, prior to assuming and assigning these agreements, would have to cure any past defaults that existed prior to the assumption. *See* 11 U.S.C. § 365(b)(1)(A); *see also Eastern Airlines Inc. v.. Ins. Co. of the State of Pa. (In re Ionosphere Clubs, Inc.)*, 85 F.3d 992, 999 (2d Cir. 1996) (citation omitted) (stating that the contracting parties must receive the full benefit of their bargain if they are forced to continue performance).

6. In the First Assumption Notice, the Debtors have designated the potential cure amounts for each of the contracts listed in paragraph 4 (b), (c), (d), (e) and (f) as \$0.00. This is incorrect and the actual cure amount due and owing under each of these agreements is substantially more than \$0.00.

7. Likewise, in the First Assumption Notice, the Debtors have designated the potential cure amount for the contract listed in paragraph 4(a) (allegedly with Aramark Service Master Facility Services) as \$319,550.00. Aramark remains in the process of identifying this specific contract but, upon information and belief, the actual cure amount due and owing under this agreement is more than \$319,550.00.

8. Finally, in the First Assumption Notice, the Debtors have designated the potential cure amount for the contract listed in paragraph 4(g) (allegedly with Aramark Uniform Corp.) as \$278,977.00. Aramark remains in the process of identifying this specific contract but, upon information and belief, the actual cure amount due and owing under this agreement is more

than \$278,977.00.

9. Aramark is in the process of determining the proper cure amounts that are due and owing but has filed this Objection to preserve its rights. Accordingly, Aramark reserves the right to amend and/or supplement this Objection, particularly given the abbreviated time afforded to it by the Debtors.

10. In addition, Aramark has not had an opportunity to fully review any of the limited adequate assurance information provided by the Debtors, but what has been provided is insufficient such that assignment and assumption of agreements is inappropriate. All rights and arguments of Aramark in connection with the Purchaser's provision of adequate assurance are reserved and preserved pending further review. *See 11 U.S.C. § 365(b)(1).*

11. Accordingly, Aramark objects to the First Assumption Notice and to the entry of any Order approving the assumption or assignment of any agreement between Debtors and Aramark without payment of the proper cure amounts due and owing under these agreements.

12. This Objection is also without prejudice to the fact that there may be additional cure amounts that will accrue on an ongoing basis between the filing of this Objection and any subsequent assumption and assignment of the aforementioned agreements. As such, Aramark reserves any and all of its right to amend, supplement, or modify this Objection up to and including the actual assumption and assignment of the aforementioned agreements.

WHEREFORE, Aramark respectfully requests that this Court deny the assumption of the Aramark agreements, as described herein, without the payment of the proper cure amounts plus such other and further relief as the Court deems just and proper.

Respectfully submitted,

Dated: January 25, 2019

DUANE MORRIS LLP

/s/ James J. Holman

James J. Holman, Esq. (NY 4423190)

Jarret P. Hitchings, Esq.

30 South 17th Street

Philadelphia, Pennsylvania 19103

(215) 979-1000

jjholman@duanemorris.com

jphitchings@duanemorris.com

*Counsel for Aramark Corporation
and certain of its affiliates*

DUANE MORRIS LLP

James J. Holman, Esq. (NY 4423190)
Jarret P. Hitchings, Esq.
30 South 17th Street
Philadelphia, Pennsylvania 19103
jjholman@duanemorris.com
jphitchings@duanemorris.com

*Counsel for Aramark Corporation
and certain of its affiliates*

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re:

SEARS HOLDINGS CORPORATION, *et al.*,¹

Debtors.

Chapter 11
Case No. 18-23538
(Jointly Administered)

CERTIFICATE OF SERVICE

I, James J. Holman, Esq., certify that I am not less than 18 years of age, and that on the date set forth below, I caused a true and correct copy of the foregoing *Limited Objection and*

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); and Sears Brands Management Corporation (5365). The location of the Debtors' corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179. The Debtors also include SHC Licensed Business LLC (3718), filed as Case No. 18-23616 and SHC Promotions LLC (9626), filed as Case No. 18-23630 (the "Additional Debtors"). The Additional Debtors each filed a motion in their respective chapter 11 case requesting joint administration with the Debtors for procedural purposes only pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure.

Reservation of Rights of Aramark Corporation and Certain of Its Affiliates to Debtors' Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transaction to be made upon the parties set forth on the attached service list by electronic mail and first class mail, postage prepaid, unless otherwise noted.

Under penalty of perjury, I declare that the foregoing is true and correct.

Dated: January 25, 2019

/s/ James J. Holman
James J. Holman, Esq.

SERVICE LIST

Chambers of the Honorable Judge Robert D. Drain
United States Bankruptcy Court for the Southern District of New York
300 Quarropas Street, Room 248
White Plains, New York 10601

c/o Sears Holdings Corporation
3333 Beverly Road
Hoffman Estates IL 60179
Attn: Stephen Sitley Esq., and Luke J. Valentino, Esq.

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153
Attn: Ray C. Schrock, P.C., Jacqueline Marcus, Esq., Garret A. Fail, Esq., and Sunny Singh, Esq.

Office of the United States Trustee for Region 2
201 Varick Street, Suite 1006
New York, New York 10014
Attn: Paul Schwartzberg, Esq.

Skadden, Arps, Slate, Meagher & Flom LLP
4 Times Square
New York, NY 10036
Attn: Paul D. Leake, Esq., Shana A. Elberg, Esq., and George R. Howard, Esq.

Davis Polk & Wardell LLP
450 Lexington Avenue
New York, NY, 10017
Attn: Marshall S. Huebner, Esq. and Eli J. Vonnegut, Esq.

Cleary, Gottlieb
One Liberty Plaza, New York, NY, 10006
Attn: Sean A. O'Neal, Esq.

Kelley Drye & Warren LLP
101 Park Avenue
New York, NY 10178
Attn: Eric R. Wilson, Esq., Benjamin D. Feder, Esq., and T. Charlie Liu, Esq.

Seyfarth Shaw LLP
620 Eighth Avenue
New York, NY 10018
Attn: Edward M. Fox, Esq.

Carter Ledyard & Milburn LLP
2 Wall Street
New York, NY 10015
Attn: James Gadsden, Esq.

Locke Lord LLP
111 South Wacker Drive
Chicago, IL 60606
Attn: Brian A. Raynor, Esq.

Akin Gump Strauss Hauer & Feld LLP
One Bryant Park
New York, NY 10036
Attn: Philip C. Dublin, Esq., Ira Dizengoff, Esq., and Sara Lynne Brauner, Esq.

Choate, Hall & Stewart LLP
Two International Place
Boston, MA 02110
Attn: Kevin J. Simard, Esq. and Jonathan Marshall, Esq.

Lazard Frères & Co., LLC
30 Rockefeller Plaza
New York, New York 10112
Attn: Brandon Aebersold and Levi Quaintance

Transform Holdco LLC c/o ESL Partners, Inc.
1170 Kane Concourse, Suite 200
Bay Harbor Islands, FL 33154
Attention: Kunal S. Kamlani and Harold Talisman